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From: James C. Eaves, Jr. (502) 587-3724 (502) 540-2263

Date: November 16, 2005

Subject: Response to Notice of Allowability

Pages: 4 page(s), including cover page

Report Transmission Problems To: Jim Eaves (502) 587-3724

Message:

Apln. No.	:	10/787,055	Confirmation No.	4414
Applicant	:	MARTIN, John J.		
Filed	:	02/25/2004		
TC/AU	:	1772		
Examiner	:	Alexander Thomas		
Docket No.	:	034851P0025		
Customer No.	:	23828		

Commissioner for Patents
P.O. Box 1450
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Dear Sir: Please see the attached 3 page Response to Notice of Allowability requesting that the request for a substitute declaration be withdrawn. The Response also includes a Certificate of Facsimile Transmission thereon.

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CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 CFR 1.8

THE UNDERSIGNED CERTIFIES THAT THIS RESPONSE TO NOTICE OF
ALLOWABILITY AND FAX COVER SHEET ARE BEING SENT BY FACSIMILE
TRANSMISSION TO UNITED STATES PATENT OFFICE FAX NUMBER
571-273-8700, THIS 16th DAY OF NOVEMBER, 2005.

RESPONSE TO NOTICE OF ALLOWABILITY

Sir:

This paper is filed in response to the Notice of Allowability mailed November 14, 2005. In box 4 of the Notice, the Office states that a substitute oath or declaration must be submitted. On page 2, paragraph 2 of the Notice, the Examiner states that the "declaration is defective in that it does not reference the provisional application upon which applicant is relying for priority." In a telephone discussion with the Examiner on November 16, 2005, the Examiner stated that a clerk in the group art unit had stated to him that this was a requirement and that he could find nothing to dispute the clerk. No citation was provided in the Notice or in the phone call to 35 USC, 37 CFR, or the MPEP for this stated requirement. Applicant's Attorney respectfully disagrees that this is a requirement and states that the inventor's declaration filed with the application is not defective. Applicant's Attorney further respectfully requests that the noticed requirement that a substitute declaration be withdrawn.

Appl. No. 10/787,055

Response dated November 16, 20005

Reply to Notice of Allowability mailed November 14, 2005

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The instant patent application was filed on February 25, 2004 and the inventor's declaration form filed with the application package was the then current PTO inventor's declaration form from the PTO web site, namely form PTO/SB/01 (08-03). That form contained no box for making a claim of priority to the earlier filed U.S. provisional patent application. While such a box had existed on earlier versions of the PTO form, it was not on this form or subsequent forms. I would refer to the Patent Office web site forms frequently asked questions (faq) at <http://www.uspto.gov/web/forms/qas.html>, where the first faq states:

Q1. I noticed that the declaration forms no longer have a box to claim domestic priority under 35 U.S.C. 119(e). Why was this deleted from the forms?

The domestic priority box for 35 U.S.C. 119(e) benefit claims was removed from the declaration forms because it is not required by the statutes or by the related rules to state a domestic priority claim under 35 U.S.C. 119(e) in the declaration. The presence of this box created confusion, and may have caused unnecessary objections to declarations when this box was not filled out and applicant was indeed claiming domestic priority to provisional application(s). To claim domestic priority under 35 U.S.C. 119(e), applicant must comply with 37 CFR 1.78 which requires, in part, that the priority claim information be in either the first line of the specification or in an application data sheet.

Applicant's Attorney notes that para [0001] of the specification states: "This application claims the benefit of U.S. Provisional Application No. 60/450,154, filed February 26, 2003."

Applicant's Attorney respectfully submits that Applicant, in the application initially filed, has complied with the requirements of 35 USC § 119(e)(1) and 37 CFR § 1.78 and properly claims the benefit of the provisional application. As the 3 month period to pay the issue fee is running, Applicant's Attorney would appreciate expeditious handling of this response and would appreciate a phone call from the Examiner or the GAU staff confirming that the benefit of the

Appl. No. 10/787,055

Response dated November 16, 2005

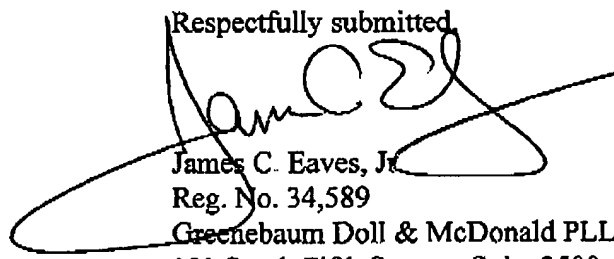
Reply to Notice of Allowability mailed November 14, 2005

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provisional patent application has been properly referenced in the specification, that the originally filed declaration is not defective, and that the noticed requirement of a substitute declaration is being withdrawn.

Should there be questions or if there are additional issues with this application, Applicant's undersigned attorney would appreciate a call at 502-587-3724.

Respectfully submitted



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